

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LEROY SHELLEY,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civ. Action No. 20-028-RGA
	:	
CAPTAIN RANDALL DOTSON,	:	
	:	
Defendant.	:	

MEMORANDUM ORDER

At Wilmington this 7th day of December, 2022, having considered Plaintiff's motion for default judgment (D.I. 27);

IT IS ORDERED that the motion (D.I. 27) is **denied**, for the following reasons:

On March 3, 2020,¹ Plaintiff signed a motion for default judgment on the grounds that Defendant has made no effort to respond to this action. (D.I. 27). Entry of default judgment is a two-step process. See Fed. R. Civ. P. 55(a), (b). A party seeking to obtain a default judgment must first request that the clerk of the court "enter . . . the default" of the party that has not answered the pleading or "otherwise defend[ed]," within the time required by the rules or as extended by court order. Fed. R. Civ. P. 55(a). Even if default is properly entered, the entry of judgment by default pursuant to Rule 55(b)(2) is within the discretion of the trial court. *Hritz v. Woma Corp.*, 732 F.2d 1178, 1180 (3d Cir. 1984).

¹ The motion was not mailed until March 28, 2022. (See D.I. 27-1).

There has been no entry of default and, therefore, default judgment is premature. In addition, Defendant has appeared, answered, and filed a motion for summary judgment. The motion will be denied.

/s/ Richard G. Andrews
UNITED STATES DISTRICT JUDGE